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Current Topics.

Lord Atkin.

IT is not necessary to be a *laudator temporis acti* to appraise the true greatness of LORD ATKIN, who passed away at the age of seventy-six on Sunday, 25th June. He died in harness, having been a Lord of Appeal in Ordinary since 1928. One has only to scan such speeches as his recent strong dissenting speech in *Liversidge* v. *Att.-Gen.* [1942] A.C. 206 to appreciate to the full the vigour and merciless logic of his brilliant mind, which he preserved to the end. Like many another great man of his generation, he graduated in classical mods and greats at Oxford, where he held a demyship at Magdalen. He was a pupil of Mr. T. E. Scrutton, who was later to become Lord Justice Scrutton, and Lord Justice ATKIN'S colleague on the Bench. Called to the Bar at Grays' Inn in 1891 (where he was later to become treasurer), he eventually succeeded in making his name as an expert in commercial and particularly stock exchange matters. In 1906 he took silk, and in 1913, at the comparatively early age of forty-five, he was appointed a High Court Judge. His appointment thoroughly justified itself, for both temperamentally and mentally none was more fitted for the judicial office. In 1919 he was appointed a Lord Justice of Appeal, and in 1929 he was appointed Lord of Appeal in Ordinary in succession to Lord Atkinson, who retired on account of age. The number of Government committees over which he presided during and after the last war demonstrated the confidence placed by the highest authorities in the soundness of his judgment. Whether the subject was naturalisation of aliens (1918–19), women in industry (1918–19), termination of the war (1918–19), British and foreign legal procedure (1918–19), Irish deportees (1924), or crime and insanity (1924), on all of which subjects he presided over committees, he invariably displayed the same perfection of logical and sound judgment. From 1919 to 1934 he held the office of chairman of the Council of Legal Education, and exercised a profound influence over its development. A perusal of any of his judgments is sufficient proof that LORD ATKIN'S was no ordinary mind. His unique gift for logic and mastery of detail invariably enabled him to cut through any confusing undergrowth of argument to the real issue. He excelled in that rare gift of a Lord of Appeal, the ability to appear to create law, without in fact altering it, by adapting old principles to new facts. Such cases as the famous *Donoghue* v. *Stevenson and Others* [1932] A.C. 562, establishing the liability of manufacturers for their negligence to consumers, and *Fender* v. *Mildmay* [1938] A.C. 1, on the validity of a promise to marry made between decree *nisi* and decree absolute of the divorce of the promisor amply demonstrate his remarkable powers. When in the future some historian will say "they were giants in those days," he will not be exaggerating in the case of LORD ATKIN. His passing is a great loss to the service of the State to which he so generously gave himself.

The Law Society's Annual Report.

THE annual general meeting of the members of The Law Society, which is to be held on 7th July, will have, among its other business, the reception of the annual report of the Council. This year the report extends to eighty-eight pages packed with information on the activities of solicitors during the past year and their plans for the future. Among the numerous decorations and honours that have been awarded to solicitors since the war began, the report notes a George Cross, a George Medal and a Croix de Guerre, and as many as 172 were mentioned in dispatches. A further 281 solicitors and 151 articled clerks joined the forces during the past year, making a total of 5,810 solicitors and 2,235 articled clerks who have joined the forces since the outbreak of war. Only a few changes have been made in deferment procedure; for example it has been extended so as to apply to girls born in 1925 as and when they become liable for national service, and the demands of the services have led to even more careful scrutiny of applications for release. The burden laid upon the panels in considering deferment applications during the past year has been eased as a result of the decision of the Ministry of Labour and National Service in a number of cases to allow deferment for an indefinite period subject to the production at intervals of not more than six months of a certificate by the solicitor to the effect that his staff position has not improved, and subject also to the decision being liable to review at any time if the man-power situation should alter materially. Broadly speaking, indefinite deferment has been granted in respect of men aged thirty-five years or over at the date of registration under the National Service Acts, if they have received three or four consecutive periods of deferment of six months each. With reference to the Society's Liaison Department to put solicitors returning to civil life into touch with prospective employers and partners, the report states that during the past year those who have already been discharged from the forces and have sought the Society's help have been found employment or partners. In the truly vast field of the Council's activities during the past year outstanding features were the written and oral evidence given on behalf of the Council before LORD HANKEY'S Inter-departmental Committee on Further Education and Training, the written and oral evidence given on behalf of the Council before the Company Law Reform Committee and the memorandum of evidence tendered by the Council to the Inter-departmental Committee on Rent Control. Among other noteworthy contents of the report are the new Solicitors' Accounts Rules, 1945, dated 9th June, 1944, fully annotated and explained, which contain certain amendments on their predecessors having regard to comments and criticisms by members and by provincial Law Societies, and which are to come into operation on 1st January, 1945. There is also a report of the Poor Persons Procedure for the year ended the 31st December, 1943.

The Law Society and Rent Control.

THE memorandum of evidence put by the Council of The Law Society before the Inter-departmental Committee on Rent Control contains constructive proposals for removing some of the more serious abuses arising out of the present housing shortage. The memorandum was compiled after receiving comments and suggestions from individual members and from provincial Law Societies. Both landlords and tenants, it is stated, are clients of solicitors, and there is no desire on the part of the profession to prefer the interests of landlords to those of tenants, and *vice versa*. The Council hold the view that the complexity, and, in many respects unreasonableness of the present legislation, tend to bring the law into disrepute. So far from regarding the Rent Acts as a gold mine, the ordinary practitioner regards cases arising out of them as unremunerative in relation to the problems involved. The Rent Acts moreover, it is said, tend to foster disregard of the binding nature of a contract, in that they encourage a tenant to obtain possession by promising payment of a higher rent, and then immediately to repudiate his word and claim the benefit of the Acts in a way in which few gamblers would plead the Gaming Acts. The Council is in favour of an amending and consolidating Act. It recommends that the rents of houses built by local authorities should be controlled on the same basis as the rents of houses built by private enterprise. It further proposes that premises consisting partly of business premises and partly of residential premises should be decontrolled forthwith, and it should be made clear that all houses built since 1st September, 1939, are controlled. The Council also suggests that as soon as conditions permit (which, in the Council's view, should be within four or five years after the end of hostilities with Germany), controlled properties should become decontrolled if and when the landlord obtains vacant possession of them, as was the case under the 1923 Act.

It is also said that the court's discretion in hardship cases under para. (*h*) of the first schedule to the 1933 Act should be repealed so far as returning service men who have let their houses in consequence of their service, and the widows of service men are concerned, who should be entitled on reasonable notice (of at least one month) to possession of their houses. The Council further considers that where alternative accommodation must be proved, it should be sufficient to show that it has been available at some date since the service of the notice to quit, whether or not it is still available at the date of the order for possession. Sub-letting without written consent should be prohibited, and consent should be conditional, at the landlord's option, on an increase of 10 per cent. on the net rent of the whole house. The Council further recommend that a standard form of rent-book should be prescribed in a schedule to the Act, and should be available at collectors of taxes and stationers.

Further Proposals.

WITH regard to the suggestions by the Auctioneers' and Estate Agents' Institute that rent tribunals should be appointed, the Council's view is that where the questions involved are largely of law, and not of administrative action, the ordinary courts of law are the best tribunals and members of the public should not be deprived of access to them. The county court procedure, the Council asserts, is quick, simple and cheap, and any difficulties which have arisen hitherto are due to the chaotic state of the legislation on the subject of rent control. Minor defects in the procedure exist, and these should be removed. For instance, there is a need for a uniform and simple system for service of notices under the Rent Acts, and provision might well be made for this on the lines of s. 196 of the Law of Property Act, 1925. An attempt should be made to deal in a new consolidating Act with the point raised in *Gray* v. *Fidler* [1943] K.B. 694, and previous cases, as to the extent to which a house must be furnished in order to constitute a furnished letting. Furnished lettings, the Council suggests, should be controlled on the basis of a rent equal to (*a*) the controlled rent of the premises on the basis of a letting unfurnished; plus (*b*) a rent equal to 20 per cent. per annum of the value as at 31st March, 1938, of the furniture included in the letting, such value to be settled in case of dispute by the county court judge or by a valuer appointed by him. A tenant who has successfully applied to the court in respect of an excessive rent for furnished premises, should, it is said, be given a protected tenancy for some limited period. Both pre–1939 and 1939 Act houses should be dealt with on the same principle, and the standard rent fixed by reference to the rent in fact payable on 31st March, 1938, or, if the property was then unlet, by reference to the last letting within a reasonable period (say, ten years) before that date, or if not then let, with reference to the first letting after that date. In the case of a house controlled on 31st March, 1938, either party should have the right to apply to the county court to fix the new standard rent. Where there has been an exceptional letting, e.g., at a low rent to a relative, or at a high rent because of a local shortage, the standard rent should be fixed by the county court. Where repairs are the landlord's responsibility, net rents, it is suggested, should be increased by 20 per cent., or an even higher increase in respect of houses more than thirty years old. Every local authority, it is recommended, should keep open for public inspection a register of standard rents of properties within its area. The obligation to register should rest on the landlord. The Council would support the proposal that rateable values should be the basic element on fixing standard rents only if there were a general reassessment of all properties throughout the country. Finally, the Council state that they are strongly of opinion that the control of mortgages should be abolished forthwith.

Education and Training of Solicitors.

A SUBJECT of the first importance is dealt with in the Annual Report of the Council of The Law Society in its memorandum to the Inter-departmental Committee on Further Education and Training. It states that in 1939 there were 17,102 solicitors in England and Wales holding an annual practising certificate. Of these approximately 12,000 to 13,000 were in practice on their own account, either alone or in partnership. Of the remaining 4,000 to 5,000 who held practising certificates (i) 2,500 to 3,000 approximately were employed as admitted managing clerks by a practising solicitor or a firm of solicitors; (ii) approximately 2,000 were engaged in government or local government service; and (iii) approximately 500 were in other employment, e.g., in banks and insurance companies. There were also 3,000 to 4,000 solicitors without practising certificates in various employments. Approximately one-third of the pre-war number of solicitors and clerks remain to continue the private practice of the profession. Not less than the pre-war total will be required after the war, it is stated, but for various reasons it is doubtful whether the required total will be available. The precise shortage will be difficult to estimate, but if demobilisation after the war is prompt the shortage should not materially delay the administration of the law. The Council estimate that the number of solicitors' articled clerks whose training has been interrupted by national service is between 3,500 and 4,000. The memorandum contains a comprehensive review of the educational system for training articled clerks and of the special war facilities, including those available in prisoner-of-war camps. It concludes that the standards of the Society's examinations in law are high and the subjects are technical. Moreover, it is stated, the rewards are in most cases modest, and those who contemplate entering the solicitors' branch of the legal profession should appreciate those facts and realise that at all times they must be prepared to put their clients' interests before all else. The memorandum ends with an estimate of the number of solicitors required after the first five years following the end of hostilities with Germany and Japan. These are 10,000 principals in private practice, 4,000 certificated and 2,000 uncertificated managing clerks, 2,000 certificated and 2,000 uncertificated government or local government officers, and 500 solicitors in commercial, business or public undertakings. The intake into the profession, it is stated, should not average over any period of ten years more than 500 per annum, if overcrowding is to be avoided.

Control of Land Use.

THE Government's White Paper on "The Control of Land Use" was published on 23rd June and contains the Government's alternative proposals to those of the Uthwatt Report, which the Government rejects, for dealing with compensation and betterment in acquiring land for public use. The White Paper accepts in principle, however, the Uthwatt Report's proposals for public acquisition of land in areas needing redevelopment as a whole. The paper states that there is general agreement about the defects in the law and administration of town and country planning to which these failures to make the best use of land before the war could largely be attributed. The Barlow, Scott and Uthwatt Reports, considered together, contain an exhaustive analysis of those defects. The use of land has long been subject to some form of control in the public interest. In particular, between 1909 and 1932 the new concept of planned use began to take legislative shape in successive enactments. Nevertheless, wrong use of land continued to result in much loss, both to individuals and to the nation, of well-being, of time and of money. The Government accept as substantially correct the Uthwatt Committee's analysis of the problems with which their report deals. There would, however, be serious practical difficulties in adopting as a whole the particular proposals suggested by the committee for solving those problems. These difficulties may be summarised as follows: (*a*) The recommendations provide substantially different treatment for (i) owners of undeveloped land outside town areas; (ii) owners of undeveloped land inside town areas; (iii) owners of developed land. In the view of the Government it is desirable to avoid such a differentiation of treatment as far as possible; (*b*) the demarcation of "town areas" for the purpose of determining on what land the development rights scheme should operate has been shown, by experiment, to present a formidable administrative task; and, inasmuch as an owner would gain or lose according to which side of the line his land fell, it would give rise to much controversy and dissatisfaction; (*c*) the basis of compensation proposed by the Uthwatt Committee follows closely that incorporated in the Coal Act, 1938, but it presents great difficulties in its application to land in view of the very different problems involved, the varying magnitude and large number of individual interests, the lack of data on which to base valuations, and the present uncertainties of future development and future values; (*d*) the scheme for a levy of 75 per cent. of increases in annual site value would be extremely complicated in operation, and its efficacy, from the revenue-producing point of view, is open to doubt. Moreover, the levy is proposed even on increases which have not in fact been realised in cash form by the owner, and on increases which may already have been paid for by the owner, as, for example, if he has bought land with a view to more intensive development later on, for which he may even have obtained express planning permission.

Recent Decisions.

In *R.* v. *Poteliakoff*, at the London Sessions on 22nd June (*The Times*, 23rd June), a jury found that the playing of poker was unlawful gaming, the Deputy Chairman (Mr. A. W. COCKBURN, K.C.) having directed them to apply the test: Is poker a game in which the element of chance is so slight as to render it one which could properly be said to be a game of mere skill?

In *Stirland* v. *Director of Public Prosecutions*, on 21st June (*The Times*, 22nd June), the House of Lords (The LORD CHANCELLOR, LORD THANKERTON, LORD RUSSELL OF KILLOWEN, LORD WRIGHT and LORD PORTER) held that although a prisoner who put his character in issue rendered himself thereby liable to be cross-examined on that subject, questions as to whether his former employer had suspected him of forgery were not relevant as going to disprove good character, and such questions should not have been put, or, if put, should have been disallowed by the judge as unfair, in the exercise of his discretion. The House held that no miscarriage of justice had occurred (s. 4 (1) of the Criminal Appeal Act, 1907), as there was an overwhelming case against the appellant, and the conviction must stand.

Cost of Works Payments.

New Procedure in War Damage Claims.

SOLICITORS with experience of negotiating settlements with the War Damage Commission of claims for cost of works payments will welcome the public statement by the chairman of the Commission (Sir Malcolm Trustram Eve, K.C.) on Monday, 26th June, 1944, announcing important new steps it is taking in connection with the administration of the War Damage Act. The chairman said that the nearer their procedure could approach to that of a normal building contract the easier it was for all concerned. Something, therefore, nearer an ideal system of administration would have involved the application of three rules: (1) to inspect war damage before it was repaired and to agree with claimants before the works were done the extent of the repairs to be paid for by the Commission; (2) to agree, whenever possible, before the works were executed, what the cost of the works payable by the Commission should be and to provide a procedure for approval of tenders and competitive estimates; (3) to publish to claimants, their professional advisers and builders, the financial basis upon which the Commission would pay for war damage repairs where the system of cost plus was inevitable. Not one of those rules, the chairman said, had in fact been practicable until the present time. In the first place, the Commission had not, and could not have got, the staff necessary to prepare or to check specifications or estimates in advance of the work and at the same time pay many thousands of claims each week. The inevitable result had been that for three years they had seldom come into the picture until after the repairs have been carried out and it was time for payment to be made. Use became general of the system known as "cost plus," that is, a charge for the prime cost of labour and materials with a percentage added thereto for on-costs, profits and such matters. The formulation, too, of any rigid "yardstick" of prices or charges was for a time equally impracticable. There was no unanimity in the industry as to the proper charges, and working conditions were constantly changing. The pamphlet "Cost of Works" (ROD.1) which they were issuing that day aimed to provide, and apply to the greatest extent possible, in cases of war damage, those three leading rules. First, on prior consultation as to extent of works, the Commission were providing facilities for this wherever there was any genuine doubt that the nature of the works rendered it necessary. Three instances of questions arising were: (1) whether a particular lack of repair was in fact due to war damage or to ordinary dilapidation; (2) whether the damaged item was "land" or "goods"; (3) how far the Commission could pay for the desired improvements, alterations and additions. The Commission would be prepared in all cases, where there was room for reasonable doubt, to advise in advance of the actual execution of the repairs. In such cases inquiries should be addressed to the appropriate regional office, and there would be officers in each area of severe damage to facilitate the procedure. The pamphlet referred to a figure of £250 as the limit, below which it was felt to be impossible, at any rate, at present, to carry out the very considerable task of agreeing tenders and competitive estimates in advance of the works. The Commission had provided a procedure under which any claimant whose bill was likely to exceed £250 could bring to the Commission particulars of the works he proposed to do and arrange with them as to the terms upon which they would undertake to pay for them. Sir MALCOLM said that the Commission held quite definitely that they were very anxious that as many cases over £250 as possible should be dealt with on a lump sum basis, provided, of course, that the tenders were genuinely competitive. They had accordingly arranged machinery whereby tenders could be brought to the Commission for examination and they could, in consultation with the claimant or his representatives, arrive at an agreement as to the amount they would pay. In all probability, said the chairman, practically all the smaller jobs (really jobbing work) and many of the larger ones would still have to be done on the method of prime cost plus percentage. The provisions which they had made constituted, as they believed, a complete code for this basis. They had set out in close detail both those items of charge for which they would pay as prime cost, and also the percentage additions, including those payable to the builder in respect of sub-trades and sub-contracts, which they would permit—they had defined both the "cost" and the "plus." Both this definition of prime cost, and these percentage additions, had been agreed with the National Federation of Building Trades Employers, and they took into account the peculiar factors which affected the work of war damage repair. The publication of this comprehensive scale would, they hoped, eliminate many of the questions of doubt and difficulty which had arisen in the past. If, however, extravagance in the expenditure on labour or materials was suspected by the Commission it would, in the future, as in the past, question the accounts (including the extent to which sub-traders and sub-contractors had been employed) and generally investigate the details of the claim as a whole. Details of further and better arrangements for the payment of instalments in the course of the execution of larger works appear in s. VI of the pamphlet. Finally, the chairman made the following points: (1) the new provisions as to assessment of proper cost in prime cost cases will not come into operation for a short time. This is to enable everyone to read them and understand them. In England and Wales they will be applied to all cases received by the Commission's regional offices on and after 1st August next, if supported by the new Certificate C.2.A.B. Application to Scotland and Northern Ireland is under consideration; (2) from 1st August the old form of certificate, C.2.A., which was provided for signature by professional adviser or builder, would become obsolete, and its place would be taken by Form C.2.A.B., the terms of which were set out in the pamphlet. This certificate was an essential part of the new agreed procedure. A large number of people had C.2.A. carefully preserved awaiting the time when they would be in a position to make a claim. When that time came they should write to their regional office and ask for the new C.2.A.B. for the purpose of certification. By doing so they would be saving themselves, their professional adviser or builder, and the Commission, a lot of bother, because after the 1st August they must have the new certificate. If they were in urgent need of one, a typewritten copy (from the model which appears in s. VII of the pamphlet) would be accepted; (3) in order to prevent any possible misapprehension, agreement by the Commission to a specification of works was not to be mistaken for permission to do the job. The onus would always be on the claimant, or his professional adviser or builder, to obtain the necessary licence and planning (or other) consents before putting any work in hand. It was hoped to see the new system in full work on 1st August. The pamphlet to which the chairman referred consists of sixteen pages in the same form as "The Practice Notes" already issued by the Commission. It is obtainable from the Stationery Office (price 1d.), and should be in the possession of all who have to advise clients on the recovery of war damage compensation. From the general point of view of solicitors with experience of war damage disputes with the Commission, it is something of a step forward to find the Commission conceding that an inspection should be made by the Commission of war damage before it is repaired and agreement with the claimant as to the extent of the repairs to be paid for by the Commission. It has been and still is a grievance that if the Commission's surveyors inspect the site at all, it is only after the works are executed, and then frequently only in a very cursory manner. No advocate in a dilapidations case would feel himself adequately equipped if he were provided with the "expert" evidence of a surveyor who had only been on the premises for a few minutes, and then only after the damage had been made good. He would, on the contrary, feel considerably handicapped. That which applies in a court of justice should apply *a fortiori* to a Commission from whose decisions on quantum there is no appeal, except on a point of law. The new procedure is therefore good news for claimants and their professional advisers.

A Conveyancer's Diary.

Re Alefounder and *Re* Bridgett and Hayes' Contract.

UNDER the Settled Land Act, 1925, s. 1 (1) (i), any instrument under which any land stands for the time "limited in trust for any persons by way of succession" is for the purposes of the Act a settlement; and by s. 2, land which is "the subject of a settlement is for the purposes of this Act settled land." Thus the extremely common form of will, by which the testator gives his house to his wife for her life and after her death on trust for sale and division of the proceeds among his children, is a settlement and the house is settled land. If the testator died before 1926 one of two things can have happened to the legal estate at the beginning of that year: either the administration will have been finished and an assent made in favour of the tenant for life, or it will not. If there was an assent, the transitional provisions of the Law of Property Act will have vested the legal fee simple of the house in the wife. This seems to have been the commonest case. In the absence of an assent (which, of course, did not have to be in writing under the old law and was readily presumed) the personal representatives in whom the land was vested will have held on trust to convey it to the testator's widow as tenant for life (see Settled Land Act, Sched. II, para. 2). Where the testator dies after 1925 the position is regulated by ss. 6 and 8 of the Settled Land Act. The land will become vested in the testator's general personal representatives, as it was not settled in his lifetime, and they will be under an obligation to make a vesting assent in favour of the tenant for life if and when called on to do so, subject always to their rights and powers for purposes of administration.

In all these cases it is essential that there should be a vesting instrument before the tenant for life makes any attempt to dispose of the legal estate; for it is provided by s. 13 that where a tenant for life has become entitled to have a principal vesting deed or a vesting assent executed in his favour, then until a vesting instrument is duly executed, any purported disposition of the legal estate *inter vivos* by anyone except a personal representative is, with certain exceptions, to take effect only as a contract, for valuable consideration, to carry out the transaction.

In a good many cases the land only becomes settled land by chance or inadvertence. Before 1926 there was no reason to

avoid the form of will mentioned above, and the testator could not have foreseen what would be the effect at the beginning of 1926. In wills made since then it is generally more satisfactory to achieve the same effect by the use of an immediate trust to sell with the widow's consent, a device which prevents the Settled Land Act from applying. Save in a few large cases where there is a clear intention to create a strict settlement, land is now very seldom deliberately made into settled land, and it mostly occurs through " home-made " wills.

In those cases of unintentional settled land very little has actually to be done under the Settled Land Act. Section 13 does not stand in the way of anything except purported dispositions of the land, and therefore all parties can get along quite satisfactorily until any question of a sale arises. Very often, in fact, the whole life of the life-tenant passes without any vesting instrument being executed or its absence noticed. On the life-tenant's death a trust for sale usually arises either by the express disposition of the testator (as in the example suggested above) or by virtue of a trust for tenants in common, bringing Settled Land Act, s. 36, into force.

The first question is whether there is any further necessity for a vesting instrument thereafter, assuming that none has been executed in the life-tenant's lifetime. It is clear from *Re Alefounder* [1927] 1 Ch. 360, that there is not. In that case the beginning of 1926 found Alefounder in the position of legal tenant in tail in possession. Such a person has the powers of a tenant for life under Settled Land Act, s. 20, and accordingly the legal fee simple vested in him at the beginning of 1926 and he became equitable tenant in tail. The question on which the case is reported was whether if he barred the entail he could immediately make a good title as beneficial owner in fee simple, or whether he would first have to obtain a vesting deed pursuant to s. 13. Astbury, J., observed that: " This interesting question is considerably complicated by the simplifications introduced by the new property legislation," but held that no vesting deed was necessary or indeed possible. Once the disentail had taken effect the land would not be settled land, and there would be no settlement. Hence, it would be difficult, if not impossible, to frame a vesting deed in accordance with s. 5 of the Settled Land Act to fit such circumstances. Moreover, under s. 112 (2) the " disposition " mentioned in s. 13 is to be read as meaning a disposition under the Settled Land Act: a conveyance by an estate owner in legal and equitable fee simple would not be made under the Settled Land Act. The decision in *Re Alefounder* has never, so far as I know, been disputed and really seems to go far enough to establish that a vesting instrument is never necessary after the conclusion of the state of affairs constituting a settlement for the purposes of Settled Land Act, s. 1.

The second question is what occurs at the death of a tenant for life in whom the legal estate is vested. Here two possibilities might seem to be open. Sections 22 to 24 of the Administration of Estates Act set up a system apparently intended to keep the legal title to settled land away from the general personal representatives of tenants for life. But s. 22 is only permissive. It enables a tenant for life to appoint the Settled Land Act trustees as his special personal representatives and directs that if he does not do so he is to be deemed to have done so. And the court is enabled to grant to such persons probate limited to settled land. I do not think there is any doubt but that if for any reason a special grant could be obtained but is not sought, the general grant carries the settled land as well as the rest of the estate; subject however to the liability to be divested in case a grant of special representation is afterwards made. The question of there being a special grant arises only where the land is settled land by reason of limitations anterior to those created by the will of the person at whose death the question arises. Thus, if the legal estate was not settled land in the testator's hands, it always goes to the general personal representatives.

But in *Re Bridgett and Hayes' Contract* [1928] Ch. 163, Romer, J., had to deal with a case where the land was settled land immediately before the death of the material party. The legal estate in certain land had been vested till her death in a life tenant, and subject to the life tenancy the land was held on trust for sale. The question was whether a good title could be made by the general personal representative of the tenant for life, to whom alone any grant had been made. Romer, J., first intimated that as the legal estate was in the life tenant immediately before her death and as there had been only a general grant of probate without any exception for settled land, " while that act of probate remains unrevoked, the testator can in my opinion properly convey the legal estate to the purchaser." All that s. 22 did was to provide that special probate *might* have been granted (assuming that it was a case for special probate at all). The Court of Probate had not actually done what it might have done, but did in fact grant probate to the executor of the life tenant. In any event, s. 22 did not apply, it being conceded on both sides that the settlement came to an end with the death of the tenant for life. Section 22 deals with " settled land," defined to mean land vested in the testator and settled previously to his death and not by his will. The learned judge said that the expression " settled land " must also mean in ss. 22–24 land continuing to be settled after the testator's death, for the persons who can claim a special grant under those sections must show the Probate Court that they are trustees of the settlement. They cannot do so if the settlement comes to an end at the death of the tenant for life; thereafter there is no settled land and no settlement of which there could be trustees. This decision has been of frequent help in dealing with cases where the settlement has come into being unexpectedly and comes to an end on the death of the tenant for life. The effect of the usual remainder for division among children following a direct life interest to a spouse will thus be to put the life tenant's executors in a position to make title in most of those cases without the necessity for any special procedure.

Landlord and Tenant Notebook.

Accommodation provided under Defence Regulations.

THE decision in *Southgate Borough Council* v. *Watson* (1944), 60 T.L.R. 392 (C.A.), has at last provided us with some authority on the status of persons who, having been rendered homeless by enemy action, have been provided with accommodation in requisitioned houses. I say " some," because the arrangements made may vary in different cases. But several county court judges have held, on occasions when the persons accommodated have laid claim to tenancies and to the protection of the Increase of Rent, etc., Restrictions Acts, that the resultant relationship was that of licensor and licensee, and I think we may now take it that only in very special circumstances is anyone so placed likely to succeed in establishing a tenancy. If he did, it is very much open to question whether the Acts mentioned would protect it: but I will come to that presently.

The recent proceeding was an appeal from a decision of His Honour Judge Alchin at Edmonton County Court, and as the only judgment delivered, that of Scott, L.J., substantially limited itself to approval and praise of the judgment below (" very simple, short, and entirely sound "), discussion must be based on the terse summary of that judgment given in the report cited (another report which I have seen gives far too short a summary and provokes the criticism that if we are to have adjudication, as well as legislation, by reference, reporters should give some account of what is being referred to).

Judge Alchin's first point was that the council were not in any event, in relation to requisitioned houses, in such control as to justify them in creating a tenancy.

The opening sentence of Scott, L.J.'s judgment reads: " The question is whether the respondents, as the competent authority, had power under the Defence (General) Regulations, 1939, to create a tenancy, turning themselves into landlords and making the person who was put into the house, because he had by enemy action lost possession of his own, a tenant."

One might observe that, strictly speaking, the regulations do not make local authorities competent authorities. For the purpose of reg. 51, which was the one invoked, certain government departments are given that qualification; but as para. (5) authorises delegation of functions, we may assume that in accordance with the usual practice the Minister of Health (one of the competent authorities named) had duly instructed the borough council.

Now this may sound a mere quibble, but I mention it because it may afford some explanation of what the county court judge meant by " not in such control as to justify them in creating a tenancy." Is the limitation to be referred to the terms of the delegation, or to the Defence Regulations?

In the latter case, I find it difficult to reconcile the statement with the language of Defence Regulation 51 (2), which enacts that the authority may do, in relation to the requisitioned property, *anything* which any person having an interest in the land would be entitled to do by virtue of that interest.

But, in either case, one would surely expect to hear something about estoppel. In one of the older county court cases in which I happened to be interested, when counsel for the local authority argued that a tenancy would be *ultra vires*, the judge promptly offered to assume, if counsel liked, that his clients had obtained possession by fraud and were trespassers, for that would not affect the position as between them and the defendant. The case was ultimately decided on the construction of a document signed by the tenant; but it may be that if the point had been gone into in that case, and if it was gone into in *Southgate Borough Council*, constructive knowledge of limitation of the council's powers would have been or was imputed to the defendant. But it is a point about which one would like to have been told more, for, as Scott, L.J.'s statement stands, it seems too wide. (If competent authorities were prohibited from granting leases, I agree that there would be no tenancy by estoppel: see *Magdalen Hospital* v. *Knotts* (1879), 4 A.C. 324.)

The second point of Judge Alchin's judgment was this: His Honour found as facts that the defendant had declined to sign any documents and that there was no express agreement with regard to the house, and held on the evidence that he had been a licensee and that the licence had been duly determined.

I think here the facts must have resembled those of a county court case decided nearly two years ago of which a short, but

useful, report appeared in *The Times*, enabling this "Notebook" to discuss the position under the title "A Tenancy or Licence Case," at 86 SOL. J. 222. The following passage from the judgment, that of His Honour Judge Hancock sitting at Wandsworth County Court, indicates the reasoning applied: "I find that it is in the minds of the parties to these agreements that they are temporary emergency measures and are not intended to have the permanence and security of tenure involved in a tenancy agreement."

No doubt, as already observed, facts may vary slightly; and I daresay that the documents which the defendant in *Southgate Borough Council* v. *Watson* refused to sign included the model form of agreement now in vogue (the work of the Ministry of Health), which, in terms, defines the grant as a licence and carefully avoids using the expression "rent." The use of such a document is, of course, not conclusive; as has been pointed out, it is substance, not words, that determine the question (see, for example, *Glenwood Lumber Co.* v. *Phillips* [1904] A.C. 405). But, by the same token, neither is the use of expressions appropriate to the relationship of landlord and tenant conclusive; indeed, it appears from one of the reports of the recent case that soon after the defendant had been given possession the clerk to the council wrote and informed him that he would be required to pay a reasonable *rent*. It would be open to the court to hold that neither party limited the scope of that expression to its original meaning of something rendered back to the owner of the land (a tenant being originally a glorified farm bailiff), and it is well known that it is commonly used to characterise periodical and other payments provided for by hire-purchase agreements, agreements for the use of films, etc. Moreover, it also appears that the payments of "rent" in the *Southgate Borough Council* v. *Watson* case were fixed, or to be fixed, by reference to what the defendant had formerly paid for the house he had lost; which shows that there was evidence to support a conclusion such as that reached by Judge Hancock and set out in my previous paragraph. Whether or not parties intend to create between themselves the relationship of landlord and tenant must, as Lord Greene, M.R., said in his judgment in *Booker* v. *Palmer* (1943), 87 SOL. J. 30 (C.A.): and see the "Notebook" for 20th February, 1943, 87 SOL. J. 63, in the last resort be a question of *intention*.

Lastly, the reason why I suggested that if a tenancy were controlled it would be outside the Increase of Rent, etc., Restrictions Act is that those statutes do not bind the Crown (*Clark* v. *Downes* (1931), 145 L.T. 20), and the property is requisitioned by the Crown though functions are delegated to the local authorities.

To-day and Yesterday.

LEGAL CALENDAR.

June 26.—The great Irish rebellion of 1798 broke out virtually foredoomed to failure, for the Government spies had worked well and nearly all the principal leaders had been already arrested. The insurrection began on the night of the 23rd May and within a month its collapse was certain. On the 26th June Lord Chief Justice Carleton opened a special commission in Dublin to try those responsible for the enterprise who were now arraigned on charges of high treason. The grand juries for Dublin City and County found true bills against six men. The trials and condemnations took up a month.

June 27.—On the 27th June, 1752, Moses Moravia and John Manoury, two Jews, were tried at the Old Bailey on a charge of having conspired to scuttle the ship *Elizabeth and Martha* in order to defraud the underwriters. Captain Misson, the master of the vessel, had absconded. The prisoners' fraud was to purchase goods, put them on board, remove them secretly in the night and then procure the sinking of the ship. They were convicted and condemned to a year's imprisonment in Newgate and also to stand in the pillory once on Tower Hill and once at the Royal Exchange; they were also to pay a fine of £20 each and to find securities for their good behaviour for five years.

June 28.—James Boswell, the biographer of Dr. Johnson, was a member of the English, as well as the Scottish, Bar. In 1788, through the influence of Lord Lonsdale, he was elected Recorder of Carlisle, his countryman, Dr. John Douglas, having been appointed Bishop in the previous year. Inspired by the coincidence he wrote an epigram:—

> "Of old, ere wise Concord united this isle,
> Our neighbours of Scotland were foes at Carlisle;
> But now what a change we have here on the Border,
> When Douglas is Bishop and Boswell Recorder."

He did not stay Recorder long, for on the 28th June, 1790, he sent "the Mayor, Aldermen, Bailiffs and Capital Citizens of Carlisle" a letter resigning the office.

June 29.—Charles Hope was born on the 29th June, 1763. After studying law at Edinburgh University, he was admitted an advocate in 1784. He became sheriff of Orkney in 1792 and was appointed Lord Advocate in 1801. In 1804 he was made Lord Justice Clerk, assuming the judicial title of Lord Granton, and seven years later he became Lord President. He resigned in 1841, being succeeded by Lord Boyle, the Lord Justice Clerk, while his own son John succeeded Boyle. Lord Cockburn, who was his colleague as a judge, wrote of him: "As a lawyer, our late head has never shone; but integrity, candour, kindness and gentlemanlike manners and feelings gained him almost unanimous esteem; while an imposing presence and a magnificent voice, even in age, enabled him to perform those many parts of his duty, the performance of which is chiefly to be appreciated from the outside, with great credit. His deficiencies were in law and in judgment. Time has greatly mellowed him, principally by softening his vehemence, and thus letting the humanity of his dispositions have fair play." When Britain was threatened with invasion in the time of Napoleon he played a great part in organising the Edinburgh Volunteers, of which he eventually became Lieutenant-Colonel.

June 30.—The mutiny of the fleet at Spithead in April, 1797, was easily explained by the intolerable conditions under which the seamen were serving, and the outbreak was subdued by reasonable concessions and the promise of a general free pardon. Redress having been obtained, the mutiny at the Nore which flared up immediately after, has many mysterious elements, which do not exclude the possibility of intrigues with revolutionary France at a time when England stood in increasing peril of invasion. The ringleader was a seaman named Richard Parker, who, barely six weeks before, had obtained his release from a debtor's prison by volunteering for the Navy. It is hard to understand how he came to be so soon accepted as the head of the mutineers, nor is it clear where his committee of delegates obtained the funds with which they were amply provided. They hoisted the red flag on the *Sandwich*, sitting almost continuously in the Admiral's cabin. They received with insolence those of the Lords of the Admiralty who came to confer with them. They blockaded the mouth of the Thames and their men paraded Sheerness with red flags. At the height of the mutiny thirteen ships of the line, besides frigates, sloops and gunboats, were involved, but eventually the strong line taken by the authorities and the sheer rascality of the movement caused a reaction. Parker was ready to take the fleet over to the enemy, but gradually the ships returned to duty and at last his men gave him into custody. On the 30th June, 1797, he was hanged on board the *Sandwich*.

July 1.—On the 1st July, 1769, Chief Justice Wilmot heard at the London Guildhall a cause "between the representatives of Mr. Frederick, formerly a capital merchant of this city, and the representatives of Sir Stephen Evance, Bart., then a very great banker. The original transactions which gave birth to the cause passed upwards of four score years ago, since which era with but few intervals, a suit and suits have been depending. This was the issue directed by the House of Lords, upon an appeal from a decree of the Court of Chancery, to inquire into the facts of a spoliation complained of by Sir Stephen's having fraudulently destroyed a voucher of such contents of Mr. Frederick's whereby he was damnified in the mutual accounts, and consequently his estate lessened to the amount of £4,000. The proof of the fact rested almost entirely on the examination of Paul Jodderal, Esq., the only surviving witness in the year 1726, many years after the imputed spoliation. The jury, after a hearing of five hours, found a verdict for the defendant without going out of court."

July 2.—On the 2nd July, 1765 "a cause was tried in the Court of King's Bench upon the statute of usury, when a person, who had taken 16s. for discounting a note of hand for £30 that had but six weeks to run, had a verdict given against him for £90 costs, being treble the sum lent."

TEMPLE ARCHITECTURE.

The exhibition of the National Buildings Record at the National Gallery conveys in a small compass a reassuring reminder of the variety and charm of English architecture at its best, and provides standards with which the mechanised monotony and barren oppressiveness of the "human warehouse" school of contractors' constructions can be confronted and by which they can be judged. With Lord Greene, the Master of the Rolls, as chairman of the Council of Management, and Lord Justice MacKinnon also a member, one can foresee that good influences will be brought to bear on the restoration of the Temple. The exhibition includes some interesting architectural drawings of the buildings there before the devastation of the air raids, giving the dates of erection and the names of the architects. It recalls what deep injury the Inner Temple suffered at the hands of the brothers Smirke, both fashionable architects in their day, Robert, who was its surveyor from 1814 to 1828, and Sydney who succeeded him. Both had a hand in spoiling the Temple Church at enormous expense. Robert began by meddling with the Round, destroying the ancient chapel of St. Anne on the south side, while Sydney completely remedievalised it to the then prevailing taste, annihilating all Wren's work in it. Robert rebuilt the library, Sydney the hall. Robert put up Mitre Court Buildings, and Sydney Nos. 4 to 6, Crown Office Row. And more besides lies to their account. They and the benchers who abetted them did more than one would believe possible to take from the Inn that "cheerful, liberal look" of Charles Lamb's Temple.

Our County Court Letter.

Launderers' Liability for Loss of Clothes.

In a recent case at Edmonton County Court a customer claimed £2 4s. from a laundry company as damages for breach of contract, or alternatively for negligence in losing her washing. The defendants admitted the loss, but contended that, under a clause on the ticket supplied by them to the plaintiff, their liability was limited to twenty times the amount of their charge for the laundry service. They accordingly had paid 10s. into court. His Honour Judge Gordon Allchin observed that, while sympathy was with the plaintiff, the overriding consideration was the above clause on the ticket. Judgment was accordingly given for the plaintiff for 10s., without costs. Compare *Smith* v. *Romford Steam Laundry*, noted at p. 150, *ante*, in which a contrary decision was given, i.e., the defendants were held liable for the full value of the goods, in spite of a similar clause in the laundry book.

Misrepresentation in Possession Case.

In *Uff* v. *Darby* at Peterborough County Court the claim was under the Increase of Rent, etc., Act, 1920, s. 5 (6), for damages (£45 7s. 6d.) for misrepresentation and concealment of fact in obtaining a possession order on the 10th November, 1942. The order had been granted on the ground that a cottage, then occupied by the present plaintiff, was reasonably required by the present defendant for occupation by a farm worker. The latter, however, had not then given notice to leave his existing employment with a third party. In fact the cottage remained vacant for nine months after the order and was then occupied by a relative of the present defendant. The relative was the person for whom the cottage was originally required, not the farm worker. The latter allegation was denied by the defendant, whose case was that the farm worker was prevented by illness in his family from moving into the cottage. The application was *bona fide* and misrepresentation was denied. Moreover, the plaintiff had obtained other accommodation, nearer his work, at a lower rent, viz., 5s. instead of 8s. No damage had therefore been suffered. His Honour Judge Langman observed that he had made the order in good faith. It was incredible, however, that the cottage would have remained vacant so long if the grounds of application had been genuine. Judgment was given for the plaintiff for £21 and costs.

Claim on Award.

In *Whitehouse & Sons* v. *G. R. Mole Bros.* at Kidderminster County Court the claim was for £118 on an umpire's award. The plaintiffs' case was that in December, 1940, a company—General Refractories, Ltd.—owned sand and gravel on freehold land of which the company was the proprietor. The company worked the sand and gravel and for that purpose purchased a vibrating screen. The sand and gravel was sold to the defendants on the site and the plaintiffs were the company's successors in title under an assignment of its agreement with the defendants. The agreement expired on the 1st January, 1942, and the defendants became under a duty to clear the site. Nevertheless they left debris and the subsequent dispute was referred to arbitration. The arbitrators disagreed and the umpire awarded the plaintiffs £118, subject to their doing certain repairs to the vibrating screen. The defendants admitted liability for £48, but disputed £78 in respect of the vibrating screen, which they alleged was not in accordance with the award. His Honour Judge Roope Reeve, K.C., gave judgment for the plaintiffs, with costs.

Illegal Eviction.

In *Allsopp* v. *Farthing* at Chesterfield County Court the claim was for damages for the wrongful eviction of the plaintiff from an unfurnished room in the house of the defendant. The plaintiff was aged seventy years, and his case was that on the 5th June, 1941, he became the tenant of a bed-sitting room at a rent of 5s. per week. He remained there until the 4th January, 1944, when during his absence the defendant moved the plaintiff's furniture into the street. The plaintiff therefore incurred expense in obtaining other accommodation and his furniture was damaged. The defendant's case was that he adopted the above measures on the advice of a police officer by reason of the defendant's objectionable behaviour. His Honour Judge Willes observed that it was doubtful whether any such advice would be given by a responsible police officer. Judgment was given for the plaintiff for £21 and costs.

Decision under the Workmen's Compensation Acts.

Accident to Farm Worker.

In *Venables* v. *Downes*, at Shrewsbury County Court, the applicant was a farm worker, aged thirty-six. On the 24th December, 1942, a truss of clover had fallen on his neck. On the 18th March, 1944, the medical evidence was that the applicant was suffering from arthritis of the spinal column. The respondent's case was that the applicant was not now totally incapacitated. His Honour Judge Samuel, K.C., made an award of £2 18s. per week from the 29th September, 1943, to the 28th November, 1943, and thereafter at the rate of £3 1s. 3d. per week, with costs.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors Journal.]

Legal Reform.

Sir,—In your issue of the 17th June last, at p. 210, appeared a letter from Mr. Bertram Plummer, who said, *inter alia*, that—

(1) During this war the most notable work of The Law Society as a body has been to obtain an increase in the remuneration of solicitors; and

(2) While most professions have been addressing themselves to ascertaining what part their profession can play, neither The Law Society nor the Bar Council has done anything in respect of this urgent matter.

These two statements are so remarkable that I feel some comment upon them would not be out of place.

I cannot speak for the Bar Council, but as regards The Law Society I should like to point out that during the war:—

(*a*) It has been responsible for three Acts of Parliament, i.e., (i) the Solicitors (Disciplinary Proceedings) Act, 1939; (ii) the Solicitors (Emergency Provisions) Act, 1940; and (iii) the Solicitors Act, 1941, which contains, *inter alia*, two major professional reforms, viz., the provision for the compensation fund and the compulsory inspection of accounts.

(*b*) It has taken an active part in encouraging other legislation of a public character. The Society has been directly concerned with the War Damage Bill, recent Finance Bills, the Liabilities (War-Time Adjustment) Bill and the Landlord and Tenant (Requisitioned Land) Bill, amongst others.

(*c*) It has given evidence before a number of departmental and inter-departmental committees, including those considering the subjects of Rent Control and Company Law.

(*d*) It has concerned itself directly for the profession by (i) preparing a post-war aid scheme to assist solicitors and articled clerks on their return from national service; (ii) assisting solicitors and articled clerks in prisoner-of-war camps by the transmission of books and the holding of examinations; (iii) conducting for the War Office the Vocational Scheme in legal subjects for all members of the Armed Forces; and (iv) taking a major part in the promotion and execution of the Naval, Military and Air Force Legal Aid Schemes.

These are but a few of the Society's war-time activities, which are, however, set out in greater detail in the Annual Reports of the Council covering the last five years. A study of these Reports will show the extent and variety of The Law Society's interests, and give some indication of the efforts which the Society has made not only to assist the profession, but to bring to the attention of the authorities cases where existing law works hardship or injustice and requires amendment in the public interest.

T. G. Lund,
Secretary, The Law Society.

London, W.C.2.
27th June.

The Permanent Court of International Justice.

Sir,—Readers of, the most interesting commentary in the Solicitors' Journal of 24th June, at p. 217, will note with disappointment the following conclusions in the report of the informal Inter-Allied Committee on the future of the Permanent Court of International Justice over which Sir William Mackin, Legal Adviser to H.M. Foreign Office, presided, and to which Mr. Eden referred in the House of Commons on 14th June:—

(1) It is of prime importance that the jurisdiction of the court should be confined to matters that are really "justiciable," all possibility being excluded of the court being used to deal with cases which are essentially political and require to be dealt with by political means.

(2) There should be no provision for making the jurisdiction of the court compulsory.

(3) It (the committee) cannot solve the problem of how, by means of such a court, to abolish war. In the opinion of the committee the difficulties of drawing a boundary line between justiciable and political disputes may well be at the centre of that problem.

As one of the many who consider that the horrors of war will only be superseded by the compulsory reference of all international differences to a trusted tribunal (just as civil war in our country was only abolished by a strong independent and trusted internal judiciary), may I be permitted to submit that in one sense no international dispute is strictly justiciable, for it cannot be decided by any system of law to which both parties are adherents.

The committee no doubt have in mind to limit jurisdiction to the interpretation of treaties and conventions and to do so on the judicial construction to be placed on the words used.

But the very kind of dispute which, if unsolved by the decision of a tribunal, in which the parties have confidence, leads to war, is nearly always of a mixed political character, though it can and should be more accurately and dispassionately adjudicated by the jurist.

Would not progress be made if the principles to be applied by the court follow the analogy of our own system of equity in tempering where necessary the logical impact of law, or in granting or refusing relief where "public policy" is thereby held to be best served. King James said on this subject :—

"Where the rigour of the law will undo a subject, then the Chancery tempers the law with equity and so mixes mercy with justice where it preserves a man from destruction."

In January, 1939, and later, in June, 1942, I submitted drafts for the constitution, composition, jurisdiction and procedure of the World Court for International Justice. Examination of subsequent views on this subject now lead me to suggest that added to the judicial members of the tribunal there should be permanent assessors in economics, science and finance, and sociology to be called into consultation at the instance either of the judges or of either party, on the principle of the Elder Brethren of Trinity House in Admiralty cases.

In spite of our subsequent disappointment, there must surely have been some foundation on which Lord Halifax, then Foreign Secretary, said on 15th February, 1939 :—

"There is *no* European Government which has not stigmatised war as a fatal method of settling international disputes."

Political and diplomatic methods have signally failed. It is essential to consider whether we may do better by a properly constituted World Court for International Justice.

London, E.C.2. CHARLES L. NORDON.
26th June.

Borrowed Hangman.

Sir,—With reference to the note under the above heading on p. 210 of your issue of the 17th June last, is there any authority for the appointment of a common hangman? It is, I believe, the established custom of the Home Office to supply the rope, but could not the sheriff say: "It is my duty, imposed by statute, to hang the criminal and, although I shall be pleased to use the rope supplied by the Home Office, I decline to pay anyone to do the work I can do myself, and I shall therefore carry out the execution personally"?

Norwich. ERNEST I. WATSON.
20th June.

Obituary.

MR. A. J. ELLABY.

Mr. Arthur James Ellaby, solicitor, of Southampton, died on Friday, 2nd June, aged seventy-eight. He was admitted in 1889.

MR. J. H. KEAN.

Mr. James Henry Kean, solicitor, of Fleetwood, Hants, died on Wednesday, 14th June, aged eighty-six. He was admitted in 1885.

MR. J. A. JOHNSON.

Mr. John Alfred Johnson, solicitor, of Messrs. Price, Johnson and Jackson, of Wigan, died recently, aged eighty-one. He was admitted in 1886.

Notes and News.

Honours and Appointments.

The King has approved the Home Secretary's recommendation that Mr. JOHN LHIND PRATT be appointed a Metropolitan police magistrate in place of Mr. Kenneth McLean Marshall, who has resigned. Mr. Pratt was called by the Middle Temple in 1909.

Notes.

A Memorial Service for the late Lord Atkin will be held in the Chapel of Lincoln's Inn on Tuesday, 4th July, at 4.30 p.m.

The Association of Czechoslovak Advocates Abroad announce that Professor Harold J. Laski will speak at 5.30 on Wednesday, 12th July next, at the Czechoslovak Institute, 18, Grosvenor Place, S.W.1, on "What do we mean by Reconstruction."

Wills and Bequests.

Mr. Henry Arthur Thomas, solicitor, of Cheltenham, left £129,484, with net personalty £127,880.

Mr. William Tudor Fernell, solicitor, of Sheffield, left £5,315, with net personalty £5,247.

Mr. Alexander Nelson Radcliffe, solicitor, of Widecombe-in-the-Moor, Devon, College Street, Westminster, and Kensington Square, W., left £77,737, with net personalty £48,046.

CORRECTION.

In our report of *F.P.H. Finance Trust, Ltd.* v. *Inland Revenue Commissioners*, at p. 203 of our issue of 10th June, it should have read "Viscount Maugham, Lord Atkin and Lord Porter agreed in *allowing* the appeal" not "*dismissing* the appeal."

Notes of Cases.

HOUSE OF LORDS.

The Representative Body of the Church in Wales *v.* Tithe Redemption Commission.

Plymouth Estates, Ltd. *v.* Tithe Redemption Commission.

Viscount Simon, L.C., Lord Macmillan, Lord Wright, Lord Porter and Lord Simonds. 24th May, 1944.

Ecclesiastical law—Church in Wales—Tithe rentcharge vesting in Ecclesiastical Commissioners—Whether "lay impropriators"—Welsh Church Act, 1914 (4 *& 5 Geo. 5, c.* 91), *ss.* 4, 6, 28 (1).

Appeal from a decision of the Court of Appeal (87 SOL. J. 200).

This summons was taken out by the Tithe Redemption Commission established under the Tithe Act, 1936, and asked for the determination of the question whether, upon the true construction of the Welsh Church Acts, 1914 and 1919, the tithe rentcharges, which were formerly vested in the Ecclesiastical Commissioners for England, and which, if the Tithe Act, 1936, had not been passed, would have been transferable to the University of Wales under the Welsh Church Acts by the defendants, the Commissioners of Church Temporalities in Wales, became vested under the said Acts, and were immediately before the 2nd October, 1936, vested in the defendants, the Commissioners of Church Temporalities in Wales (*a*) subject to the liability for the repair of chancels of churches to which they were subject immediately before the vesting thereof in the said defendants, or (*b*) freed from such liability. The effect of the Welsh Church Acts, 1914 and 1919, was to disestablish the Church in Wales, and, from the date of such disestablishment, s. 4 (1) of the Act of 1914 provided that there should vest in the defendants, the Commissioners of Church Temporalities in Wales, all property vested in the Ecclesiastical Commissioners which was Welsh ecclesiastical property. Section 28 (1) of the Act of 1914 provides: "Nothing in the Act shall affect any liability to pay tithe rentcharge, or the liability of any lay impropriator of any tithe rentcharge, to repair any ecclesiastical building, but a county council shall not, by reason of being entitled to or receiving any rentcharge under this Act, be liable for the repair of ecclesiastical building. (2) Such liability as aforesaid of a lay impropriator may be enforced in the temporal courts at the instance of the representative body in like manner as if such liability arose under a covenant made with the respective body and running with the tithe rentcharge." Bennett, J., held that upon the true construction of the Acts the rentcharge had vested in the Commissioners for Church Temporalities in Wales free from any liability for the repair of chancels of churches to which the ownership thereof gave rise. The Court of Appeal affirmed this decision. The defendants, the Representative Body of the Churches of Wales, and P., Ltd., lay impropriators, appealed.

VISCOUNT SIMON, L.C., said in his opinion the section of the Welsh Church Act, 1914, upon which the matter chiefly turned was s. 28. The argument was since ecclesiastical courts and ecclesiastical law ceased to exist as law from the date of the disestablishment, and since the Welsh Commissioners as well as the county councils and the university would not be affected by the covenant imposed on members of the Church in Wales under s. 3 (2), all liability for church repairs ceased in connection with tithe rentcharge vested by the Act in the Welsh Commissioners. According to this view, owners of tithe rentcharge in the position of P., Ltd., were the only class of owners to be regarded as lay impropriators and their liability was preserved by s. 28 (2). There was no definition of "lay impropriator" in the Act of 1914. They had therefore to ask themselves: (*a*) what did lay impropriator mean in its ordinary sense, and (*b*) was there anything in s. 28 which threw light on its meaning in that section. (A) A lay impropriator in its ordinary sense was a lay person or corporation who was in possession of the revenues of a living. He could not see by what right the phrase "lay impropriator" in s. 28 should be given so limited a meaning as was suggested. The county councils and the University of Wales alike acquired this species of property by force of the statute. The nature of the thing transferred and the obligations attached to its ownership did not alter, because the mode of transfer was statutory. Confining himself to the ordinary meaning of "lay impropriator," he should be led to the view that such a phrase covered the county councils and the Welsh University. (B) Moreover, the language of s. 28 indicated that the lay impropriator referred to was not limited to the kind of owner of which P., Ltd., was one. He reached the conclusion that both the county council and the University of Wales were lay impropriators. He now came to the more difficult question whether the Welsh Commissioners should be regarded as lay impropriators. While in the case of tithe rentcharge to which the county councils were entitled the Commissioners were not required to meet chancel repairs out of the tithe rentcharge in their hands, the position was different as regards tithe rentcharge which was transferable to the University of Wales. The University, when it owned the tithe, would be a lay impropriator. The Welsh Commissioners, while they had vested in them tithe rentcharge which was coming to the University, would be under a similar obligation. For these reasons he would allow the appeal.

The other noble and learned lords agreed in allowing the appeal.

COUNSEL: *Sir Walter Monckton*, K.C., *R. Gwyn Rees*; *Wilfrid M. Hunt*; *C. S. Rewcastle*, K.C., and *Meyrick Beebee*; *B. J. M. MacKenna*.

SOLICITORS: *Milles, Jennings White & Foster*; *Nicholl, Manisty & Co.*; *R. Primrose*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

In re **Pascoe**, *ex parte* **the Trustee in Bankruptcy** *v.* **Lords Commissioners of the Treasury.**

Morton and Cohen, JJ. 27th April, 1944.

Bankruptcy—Fine payable by debtor to Crown—Whether fine a debt provable in bankruptcy—Bankruptcy Act, 1914 (4 & 5 *Geo.* 5, *c.* 59), *s.* 30 (3).

Appeal from an order of His Honour Judge Richardson given at Newcastle-upon-Tyne County Court.

The debtor had been adjudicated bankrupt in 1920 and had never obtained his discharge. On the 18th June, 1942, he was convicted on seven charges of bribery and fined £300 in respect of each charge. On the 18th December, 1942, he was again adjudicated bankrupt and the appellant was appointed trustee in that bankruptcy. On the 31st December, 1942, proof of the debt of £2,100 owing to the respondents, the Lords Commissioners of the Treasury, was lodged and admitted to rank for dividend. In November, 1943, the appellant gave notice of motion to have the proof expunged. The learned county court judge dismissed the application. The trustee in bankruptcy appealed. The Bankruptcy Act, 1914, provides, s. 30 (3): "Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy."

MORTON, J., said that they had to determine whether or not the fine of £2,100 was a debt or liability provable in bankruptcy under s. 30 of the Bankruptcy Act, 1914. In determining that question they had to arrive at a conclusion in three matters: First, was the fine a debt to which the debtor was subject at the date of the receiving order according to the ordinary meaning of the word "debt"? Secondly, if so, was there any reason why the word "debt" should be given any other than its ordinary meaning in the section? Thirdly, if the fine was not a "debt" within the meaning of the section, was it a "liability" within the meaning of the section? As to the first question, he felt no doubt that the fine was a debt, if the word "debt" was to bear its ordinary meaning (Co. Litt. (bk. 3, c. 8, s. 574); *Earl of Lincoln* v. *Fysher*, Cro. Eliz. 581; *Rex* v. *Woolf* (1819), 2 B. & Ald. 609). The fine in the present case being a debt of record due to the Crown, unless they could give a very special meaning to the word, must include the fine in question. He could find no sufficient reason for failing to give to the word "debts" in s. 30 (3) its ordinary meaning. On the view he took, the third question—if there was not a debt, was it a "liability"?—did not arise. The word "liability" was a very wide word, and, if he had had to come to the conclusion that this fine was not a debt, then he might have come to the conclusion that it was a liability. The appeal should be dismissed.

COHEN, J., agreed in dismissing the appeal.

COUNSEL: *John W. Morris*, K.C., and *V. R. Aronson*; the *Solicitor-General* (Sir David Maxwell Fyfe, K.C.) and *B. J. M. MacKenna*.

SOLICITORS: *Botterell & Roche*, for *Ingledew, Mather & Dickinson*, Newcastle-upon-Tyne; *Treasury Solicitor*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

In the **Goods of Rowson, deceased.**

Wallington, J. 25th April, 1944.

Wills—"In actual military service"—Section Officer of Women's Auxiliary Air Force—Service in Balloon Command and Bomber Command—Wills Act, 1837, *s.* 11.

Motion to admit to probate written instructions to a solicitor to draw a will.

A section officer in the Women's Auxiliary Air Force had been in Balloon Command and Bomber Command and had been mentioned in despatches. She sent written instructions in her own handwriting to her solicitor to draw her will. Her solicitor drew the will and sent it to the section officer, but before she could execute it she died in hospital, while still in the W.A.A.F.

WALLINGTON, J., said that he wanted to make it quite clear in directing that the document should be admitted to probate that he was basing himself entirely upon the particular facts of the case, and must not be understood as indicating a view, even remotely, that everybody in the Women's Auxiliary Air Force was in actual military service and therefore making a soldier's will. His lordship said he was basing himself, in part at any rate, on what Hill, J., said in *In the Estate of Grey* [1922] P. 140, when he refused probate, namely, that the person whose documents were submitted for probate and in respect of which an order might be made by the judge of the High Court must have been in some place for the purpose of the war, and that predicated that the person must be in the military forces. In view of the fact that this lady was mentioned in despatches and she was in the Balloon Command, and at another time in Bomber Command at several stations, had been in charge of the Women's Auxiliary Air Force, and even at the date of her death was still on the strength of that Force, it seemed to his lordship, having regard to the circumstances in which the war was and is being carried on and to the activities she had quite plainly been engaged in from time to time, it would be wrong to say she was not on actual military service. His lordship found as a fact that she was on actual military service and admitted the document to probate.

COUNSEL: *C. A. Marshall-Reynolds*.

SOLICITORS: *Bartlett & Gluckstein*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Rules and Orders.

S.R. & O., 1944, No. 690/L.29.

SUPREME COURT, ENGLAND—PROCEDURE.

THE RULES OF THE SUPREME COURT (No. 2), 1944.

DATED JUNE 14, 1944.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the Administration of Justice (Emergency Provisions) Act, 1939, and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules of Court under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925.

1.—(1) During the Long Vacation, 1944, such number of Judges of the Probate, Divorce and Admiralty Division as the President may direct shall sit at such times as may be necessary for the trial of any cause, matter or issue which has been set down and is ready for trial and in respect of which an early hearing is desirable.

(2) During the period from the 25th September, 1944, to the 11th October, 1944 (inclusive)—

(*a*) one Division of the Court of Appeal; and

(*b*) such number of Judges of the King's Bench Division as the Lord Chief Justice may direct; and

(*c*) such number of Judges of the Chancery Division as the Senior Chancery Judge may direct;

shall, so far as reasonably practicable and necessary, sit from day to day for the hearing of such appeals, and for the trial of such causes, matters or issues as have been set down and are ready for hearing or trial.

(3) The provisions of Order LXIII, Rule 9 (which relates to Office Hours) and Rules 11 and 12 (which relate to Vacation Judges) shall have effect as if the period referred to in the last preceding paragraph were not part of the Long Vacation, 1944, but during that period a Judge of any Division shall have the same power to dispose of business assigned to another Division as he would have if he were a Vacation Judge.

2. These Rules may be cited as the Rules of the Supreme Court (No. 2), 1944.

Dated the 14th day of June, 1944.

Simon, C.

We concur,

Caldecote, C.J.

Greene, M.R.

Parliamentary News.

HOUSE OF LORDS.

Education Bill [H.C.].
In Committee. [27th June.

HOUSE OF COMMONS.

Middlesex County Council Bill [H.C.].
Read Third Time. [23rd June.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

No. 675. **Fire Services** (Emergency Provisions) National Fire Service (Employment Overseas) Regulations. June 12.

No. 695. **Increase of Pensions** (Calculation of Income) Regulations. June 16.

No. 694. Increase of Pensions (General) Regulations. June 16.

E.P. 658. **Musical Instruments and Wireless Receivers Order.** June 9.

No. 649. **Railway Order,** May 16, modifying Orders determining reductions to be made from Standard Charges where damageable merchandise is carried by railway under owner's risk conditions.

No. 690/L.29. **Supreme Court, England.** Procedure. The Rules of the Supreme Court (No. 2). June 14.

E.P. 678 **Vehicles—Harvesting.** The Use of Vehicles during Harvesting Order. June 12.

BOARD OF TRADE.

Companies Act, 1929. Company Law Amendment Committee (Chairman, Cohen, J.). Minutes of Evidence. 16th Day. April 18.

Court Papers.

TRINITY SITTINGS, 1944.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE			EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice MORTON.
Monday	July	3	Mr. Andrews	Mr. Farr	Mr. Blaker
Tuesday	,,	4	Jones	Blaker	Andrews
Wednesday	,,	5	Reader	Andrews	Jones
Thursday	,,	6	Hay	Jones	Reader
Friday	,,	7	Farr	Reader	Hay
Saturday	,,	8	Blaker	Hay	Farr

GROUP A.

DATE.			Mr. Justice COHEN. *Non-Witness.*	Mr. Justice VAISEY. *Witness.*	Mr. Justice UTHWATT. *Non-Witness.*	Mr. Justice EVERSHED. *Witness.*
Monday	July	3	Mr. Hay	Mr. Reader	Mr. Jones	Mr. Andrews
Tuesday	,,	4	Farr	Hay	Reader	Jones
Wednesday	,,	5	Blaker	Farr	Hay	Reader
Thursday	,,	6	Andrews	Blaker	Farr	Hay
Friday	,,	7	Jones	Andrews	Blaker	Farr
Saturday	,,	8	Reader	Jones	Andrews	Blaker